G. S. SEXTON & Co. v. C. AULTMAN & Co.—Decided at Wytheville, July 25, 1895.—*Buchanan*, J:

1. PLEADING—*Act of limitations—set-off under Sec. 3299 of Code—replication.* The general rule that the statute of limitations must be specially pleaded has no application to a plea of equitable set-off under sec. 3299 of the Code. The only replication which is allowed to such plea, under sec. 3300 of the Code, is a general replication, and under that replication the plea of the statute of limitations may be relied on.

2. PLEADING—*Set-off—plea—notice—act of limitations—replication.* A defendant may make the defense of set-off, other than the equitable set-off under sec. 3299 of the Code, either by a formal plea, or by a *notice* of the set-off accompanied by an account of set-offs. If the defense be by plea, he must reply it specially; but if the defense be by *notice*, there can be no replication and the act of limitations may be relied on without further pleading.

3. INSTRUCTIONS—*Surprise.* A correct instruction upon a point which the evidence tends to prove can never work a surprise in law.

COUNTY SCHOOL BOARD OF ALBEMARLE COUNTY v. A. J. FARRISH'S ADM'R AND OTHERS.—Decided at Staunton, September 30, 1895.—*Harrison*, J:

1. CHANCERY PLEADING—*Multifariousness—convenience—injury to parties.* A bill will not be declared multifarious if it proposes to accomplish the end in view in a manner and by a proceeding convenient to all concerned, unless the course pursued is so injurious to one or more of the parties as to render it inequitable to accomplish the general convenience in that manner.

2. CHANCERY PLEADING—*Multifariousness—case at bar.* A decedent had been county treasurer for several terms, and had given official bonds with sureties for each term for which he was elected. Upon his death, a bill was filed against his administrator and the sureties on his several official bonds as treasurer, for the purpose of administering his estate, settling his several accounts as treasurer, and having decrees against his administrator and the sureties on his several official bonds for the amounts due by them respectively.

Held: The method pursued is convenient and suitable, no injury is thereby done to anyone, and the bill is not multifarious.

CENTRAL LAND COMPANY v. OBENCHAIN.—Decided at Staunton, September 26, 1895.—*Buchanan*, J:

1. NEW TRIAL—*Payment of costs—objection for non-payment.* Where a new trial has been granted upon condition of payment of the costs of the former trial, as prescribed by section 3542 of the Code, but the costs are not paid at or before the next succeeding term of the court, the court may, on the motion of the opposing party, set aside the order granting it and proceed to judgment on the verdict, or it may award execution for costs as may seem best; but if neither is